IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4916 of 2001
With
CROSS OBJECTION No. 7 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

ORIENTAL INSURANCE CO LTD. - Appellant(s)
Versus
MANJUBEN WD/O VIJOYKUMAR & 4 - Defendant(s)

==========

Appearance :
MR SHALIN N MEHTA for Appellant(s) : 1,
MR SANDIP C SHAH for Defendant(s) : 1 - 3.
NOTICE SERVED for Defendant(s) : 4,
MR NIRAV C THAKKAR for Defendant(s) : 5,

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 04/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and award dated 28.8.2001 passed by the Motor Accident Claims Tribunal, Ahmedabad in MAC Petition No.1205 of 1997 by which the Tribunal awarded compensation of Rs.3,75,000/- with interest at the rate of 9% p.a. from the date of the claim petition till realization and with proportionate costs. While the appeal is filed by the insurance company for reduction of the compensation amount, respondent Nos.1 to 3 (original claimants) have filed cross objections for enhancing the compensation amount from Rs.3,75,000/- to Rs. 5 lakhs with proportionate costs and interest.

2. The claimants are the widow and two children of the deceased who received fatal grievous injuries in a motor vehicle accident which took place on 12.6.1997. Deceased Vijoy Kumar was standing on a road on 12.6.1997 when a tanker insured by the appellant- insurance company knocked down the deceased causing fatal injuries on the head and other parts of the body of the deceased. The deceased was taken to Civil Hospital at Sola and thereafter to Civil Hospital, Ahmedabad for treatment, but the deceased succumbed to the injuries. The claimants filed the claim petition for compensation of Rs.5 lakhs.

3. After considering oral and documentary evidence on record, the Tribunal held that the accident was caused by the sole negligence of the tanker driver. On the question of compensation, the Tribunal held that the deceased was engaged in the business of commission agent for loading and unloading of trucks for transport of goods. The deceased was aged 43 years. The Tribunal assessed the monthly income of the deceased aged 43 years at Rs.2,000/-p.m. and assessed the potential future income at Rs.3,000/-p.m.. Deducting 1/3rd amount as the amount which the deceased would have spent on himself, the Tribunal assessed the loss of dependency benefit at Rs.2,000/-p.m. i.e. Rs.24,000/- per annum. Adopting the multiplier of 15 years, the Tribunal assessed the loss of dependency benefit at Rs.3,60,000/-. Adding thereto, a sum of Rs.15,000/- as conventional amount for loss to the estate and also loss of consortium to the widow, the Tribunal made a total award for Rs.3,75,000/- with 9% p.a. interest and proportionate costs.

4. The insurance company has filed this appeal mainly challenging the award on the question of quantum of compensation. Mr Shalin Mehta, learned counsel for the insurance company has submitted that all that the claimants had produced was a consignment book, which did not indicate any specific income of the deceased. Hence, the Tribunal erred in assessing

monthly income of the deceased at Rs.2,000/-p.m. and the potential future income at Rs.3,000/-p.m..

5. On the other hand, Mr Sandeep C Shah, learned counsel for the original claimants has submitted that in view of the fact that the deceased aged 43 years was maintaining a family of four including a son aged 18 years who was studying in the 12th standard and a daughter aged 16 years who was studying in the 11th standard, the deceased was contributing at least Rs.5,000/- to 6,000/- for the maintenance of the family. When the Legislature has also provided for assessment of income of a very young minor at Rs.15,000/- per annum, the Tribunal ought to have assessed the monthly income of the deceased at Rs.5,000/- as the current income and thereafter the Tribunal ought to have assessed the potential future income.

6. Having heard the learned counsel for the parties and having gone through the oral and documentary evidence on record, we are of the view that while the assessment of monthly income of the deceased by the Tribunal at Rs.2,000/-p.m. was under-estimate, in absence of any definite material, such as books of account or income-tax return, it is not possible to accept the claimant's version that the deceased was earning Rs.5,000/-p.m.. In the facts and circumstances of the case, we are of the view that the monthly income of the deceased on the date of the

accident could be assessed at Rs.3,000/-p.m.. Considering the age of the deceased on the date of the accident (43 years) and considering that the deceased was engaged in the business of commission agent for loading and unloading of trucks, we are of the view that the potential income of the deceased should be assessed at Rs.4,000/-p.m.. Deducting 1/3rd amount as the amount which the deceased would have spent on himself, the total annual dependency benefit is required to be assessed at Rs.2,700/-p.m. i.e. Rs.32,400/- per annum. Applying the multiplier of 15 years as done by the Tribunal, the loss of dependency benefit works out to Rs.4,86,000/-. Adding thereto, a sum of Rs.15,000/- as the conventional amount for loss to the estate and loss of consortium as awarded by the Tribunal, the total compensation would work out to Rs.5,01,000/-. The claimants had claimed total compensation of Rs.5 lakhs, out of which, the Tribunal awarded Rs.3,75,000/-. Hence, we are of the view that additional amount of Rs.1,25,000/- is required to be awarded to the claimants.

7. In view of the above discussion, the appeal filed by the insurance company is dismissed. The cross-objections filed by the claimants are allowed and the appellant- insurance company is directed to pay additional compensation of Rs.1,25,000/- to the claimants together with interest at the rate of 9%p.a. from the date of the claim petition till realization with proportionate costs. The additional

amount shall be deposited by the insurance company within two months from today.

8. The appeal and the cross-objections are accordingly disposed of in the aforesaid terms.

(M.S. SHAH, J.)

(K.M. MEHTA, J.)

zgs/-